

DRAFT 4.28.22

MEMORANDUM OF AGREEMENT BY AND AMONG  
U. S. ENVIRONMENTAL PROTECTION AGENCY, NEW JERSEY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION AND THE TOWNSHIP OF KEARNY REGARDING  
THE SYNCON RESINS SUPERFUND SITE

THIS AGREEMENT is made on this

WHEREAS, this Memorandum of Agreement (“Agreement”) is entered into among the United States Environmental Protection Agency (“EPA”), the New Jersey Department of Environmental Protection (“NJDEP”), and the Township of Kearny, Hudson County, New Jersey (the “Township”) (collectively, “the Parties”);

WHEREAS, EPA performed a response action pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA” or “Superfund”), 42 U.S.C. §§ 9601-9675, at the Syncon Resins Superfund Site, located at 77-81 Jacobus Avenue in the Township (hereinafter the “Site”);

WHEREAS, the Site consists of property designated as Block 289, Lots 12, 13 and 13R on the Tax Map of the Township (collectively referred to as the “Property”);

WHEREAS, NJDEP and the Administrator of the Spill Compensation and Control Act (“Spill Act”) incurred cleanup and removal costs at the Site pursuant to N.J.S.A. 58:10-23;

WHEREAS, the Township is the owner of tax sale certificate numbers 939422 and 939423 dated June 23, 1995 (“Township Tax Lien”), which constitutes a lien on the Property;

WHEREAS, pursuant to Section 107(l) of CERCLA, 42 U.S.C. § 9607(l), the United States of America, on behalf of EPA, filed a lien against Lot 12 of the Property on February 17, 1995, and against Lots 13 and 13R of the Property on December 31, 1996, in the amount of the total unreimbursed response costs incurred and to be incurred by EPA in performance of response actions at the Site (hereinafter the “CERCLA Lien”);

WHEREAS, pursuant to N.J.S.A. 58:10-23.11f, the Administrator of the Spill Compensation and Control Fund and NJDEP filed a lien against the Property on September 15, 1995 (hereinafter the “Spill Act Lien”);

WHEREAS, EPA, NJDEP and the Township desire that all liens be released through a tax foreclosure action against the Property in order to facilitate the sale of the Property to a redeveloper or end user free and clear of all liens;

WHEREAS, the Parties agree that a sale of the Property to a redeveloper or end user is contingent on the third-party purchaser entering into an pre-purchase Administrative Consent Order (“ACO”) with the NJDEP pursuant to which the third-party purchaser agrees to implement the Operation and Maintenance (“O&M”) of the Operable Unit 1 (“OU1”) groundwater treatment and containment remedy that NJDEP operates at the Site as well as any other

**Commented [H1]:** DEP envisions a pre-purchase ACO in which case the buyer will execute the ACO prior to taking title (assuming the site is in DO). This can be discussed with the prospective purchaser.

**Commented [H2]:** DEP prefers that this reference be more general and not specific to the OU1 tasks. Rewording to refer to all O&M/other tasks to complete the remediation and institutional controls as needed including a Deed Notice and CEA.

necessary remediation activities, and implement institutional controls in the form of a deed notice and a Classification Exception Area ("CEA");

WHEREAS, EPA, NJDEP and the Township acknowledge that the fair market value of the Property will not permit each party's lien to be satisfied in full, but have agreed to permit the sale of the Property;

WHEREAS, EPA supports the redevelopment of Superfund sites and is willing to release its CERCLA Lien in consideration of compensation as provided below;

WHEREAS, NJDEP supports the redevelopment of Superfund sites and is willing to release its Spill Act Lien in consideration of compensation as provided below;

WHEREAS, the Township supports the redevelopment of Superfund sites and is willing to release its tax liens in consideration of compensation as provided below; and

WHEREAS, at the closing on the sale of the Property EPA, the NJDEP and the Township have agreed to distribute the proceeds of sale based upon the terms set forth herein.

NOW THEREFORE, the Parties enter into this Agreement to express their intent to undertake the following actions with respect to foreclosure, the proceeds of sale, and the release of all liens:

1. Within sixty (60) days of the execution by all Parties to this Agreement, the Township expects to commence and prosecute a tax sale certificate foreclosure against the Property with respect to Tax Liens 939422 and 939423 (referred to as the "Foreclosure Action"). The Township is not required to name EPA, the United States of America, or the NJDEP, defendants in the Foreclosure Action.

2. If Tax Liens 939422 and 939423 are not redeemed during the Foreclosure Action, the Township's tax collector will execute the affidavit of non-redemption. Unless Tax Liens 939422 and 939423 are redeemed, the Township will seek to enter a final judgment of foreclosure (the "Final Judgment"), thereby vesting title to the Property in the Township. Should the Township acquire title to the Property via foreclosure, it should submit an Exemption from Spill Act Liability Certification form to the Department. The referenced form and instructions are available on the Department's website [https://www.nj.gov/dep/spill/forms/exemption\\_spill\\_act.pdf?version=1.1](https://www.nj.gov/dep/spill/forms/exemption_spill_act.pdf?version=1.1)

**Commented [H3]:** DEP recommends that Kearny submit a Spill Act Defense form for the period of time it owns the property. See edits.

3. If Tax Liens 939422 and 939423 are redeemed prior to Final Judgment, the Township will provide the EPA and NJDEP with the name and contact information for the person(s) or entities that redeemed said Tax Liens and the Parties agree that they will take no further actions and this Agreement will no longer be in effect.

**Commented [H4]:** Clarification needed - from DEP's perspective, the person acquiring the tax liens also inherits the CERCLA and Spill Act Liens. DEP will pursue the person who redeems the tax liens.

4. Upon the entry of the Final Judgment, the Township expects to market the

Property for sale and to enter into a Contract for Sale for the maximum market value as determined by the Township and subject to the agreement of EPA and NJDEP. The Parties intend state that the Contract for Sale shall contain the contingency that the third-party redeveloper or other end user enter into an a pre-purchaser ACO with the NJDEP to assume the O&M of the OU1 groundwater remedy under NJDEP direct oversight pursuant to the Site Remediation Reform Act, N.J.S.A. 58:10C-1 et seq. and implement and comply with all institutional controls as required by EPA and NJDEP. Upon the Township's entering into a Contract for Sale of the property to a third-party redeveloper or other end user, the Township would have the right to approve the redeveloper and the redevelopment agreement pursuant to N.J.S.A. §40A:12A-1, et seq.

5. If the Township is unable to find a satisfactory buyer within one year of the entry of the Final Judgment ("Contract Deadline"), the Parties may extend the Contract Deadline in six (6) months increments, upon written notice and agreement of the Parties prior to the Contract Deadline.

6. If the Township enters into a Contract of Sale, at closing, the Township intends to abate, remove, and relinquish the Township Tax Lien with respect to the Property.

7. Following the time the Township enters into a Contract for Sale, EPA and the NJDEP expect to proceed to process a discharge and release of their respective CERCLA and Spill Act Liens. After the date of execution of the Contract for Sale and prior to closing on the Property, the prospective buyer and the NJDEP are expected to enter into an a pre-purchase ACO.

8. At the closing on the sale of the Property, (1) EPA intends to provide a discharge and release of EPA's CERCLA Lien, (2) the NJDEP intends to provide notice of a discharge and release of NJDEP's Spill Act Lien, (3) the Township intends to endorse the Township Tax Lien for cancellation. The Parties agree that the proceeds from the sale will be distributed by the title agent ("Title Agent") as follows:

- a. First, the closing costs, broker's commission, realty transfer fee and any other cost associated with the closing will be paid from the proceeds. The proceeds remaining shall constitute the net proceeds.
- b. From the net proceeds, distribution shall be according to the following tiers:

Tier 1: Net proceeds up to \$18M will be split: 70% EPA, 13% NJDEP, 17% Township,

Tier 2: Net proceeds between \$18M and \$20.5M will be split: 50% EPA, 14% NJDEP, 36% Township

**Commented [H[5]]:** As above, purchaser should enter a pre-purchaser ACO with DEP and case will be subject to direct oversight pursuant to SRRA (N.J.S.A. 58:10C-1 et seq.) and ARRCs (N.J.A.C. 7:26C). Whether full direct oversight or adjusted direct oversight to be determined as part of ACO process.

Also as above, use generic language to complete remediation tasks rather than specifying OU1.

**Commented [DEH6]:** As discussed at various meetings, DEP O&M costs will continue to accumulate during the sale process. The six-month extensions for this MOA cannot be "open ended."

**Commented [H[7]]:** Timing here can be tricky. DEP would need to have the warrant of satisfaction issued prior to closing so that when the title agency runs the last check right before closing, the lien does not show up, but we would not warrant the lien until we are paid, but we cannot be paid until the site is sold.

In this situation, DEP's usual process is to provide either a payoff letter or a draft warrant of satisfaction or both to the title company. This allows the title company to know that upon receipt of payment, we will submit the final warrant of satisfaction to superior court.

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Tier 3: Remaining net proceeds above \$20.5M will be split: 53.75%  
EPA, 21.25% NJDEP, 25% Township

- c. The method of payments shall be as follows:
- i. Within 30 days of the Township's closing on the sale of the Property to a redeveloper or other end user, the Title Agent will pay to EPA its distribution.
  - ii. The payment referenced in subparagraph i., above, will be made by electronic funds transfer ("EFT") to the EPA Hazardous Substances Superfund in accordance with instructions provided below. To effect payment via EFT, the Township will instruct any designated title company at closing to remit payment in the required amount via EFT using the following information, or such other updated EFT information that EPA may subsequently provide to the Township and the Title Agent.
  - iii. The Title Agent will make payment to EPA by Electronic Funds Transfer (EFT) through the Pay.gov website using the following link: [ HYPERLINK  
"https://gcc01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.pay.gov%2Fpublic%2Fform%2Fstart%2F11751879&data=04%7C01%7CUrdaz.Damaris%40epa.gov%7C90df0d8a8a54e2fe3dd08d8b25ef93d%7C88b378b367484867acf976aacbe ca6a7%7C0%7C0%7C637455468257165177%7CUnknown%7CTWFpbGZsb3d8eyJWljoMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6Ikl1haWwlcXVCI6Mn0%3D%7C1000&sdata=RHJ2IFJfc91i4lgr4%2Fu2yF%2F1hN2PtvmvgBxggDyaBQx0%3D&reserved=0" \h ]. The following information shall be included on the payment form:
    - a. Amount of Payment
    - b. Name of remitter
    - c. Site/Spill identifier: \_\_\_\_\_
    - d. Site Name: The Syncon Resins Superfund Site
  - iv. At the time of payment via EFT, the Title Agent will send notice, by email, that such payment has been made to the following:

U.S. Environmental Protection Agency  
Cincinnati Finance Office

[ PAGE \\*TABLEFORMAT ]

26 Martin Luther King Drive  
Cincinnati, OH 45268

[ HYPERLINK "mailto:cinwd\_acctsreceivable@epa.gov" \h ] and  
[ HYPERLINK "mailto:chalifoux.jessica@epa.gov" \h ]

and:

Pamela Baxter, PhD, CHMM, Remedial Project Manager  
Emergency and Remedial Response Division  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 19<sup>th</sup> Floor  
New York, New York 10007-1866  
[ HYPERLINK "mailto:baxter.pamela@epa.gov" ]

as well as to:

Frances M. Zizila  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 17<sup>th</sup> Floor  
New York, New York 10007-1866  
[ HYPERLINK "mailto:zizila.frances@epa.gov" ]

Such notice will reference the date of the EFT, the payment amount, the name of the Site and Site/Spill identifier.

NJDEP and the Township to include payment provisions here

d. The method of payments to NJDEP shall be as follows:

- i. Within 30 days of the Township's closing on the sale of the Property to a redeveloper or other end user, the Title Agent will pay to NJDEP its distribution.
- ii. The payment referenced in subparagraph i., above, will be made by electronic funds transfer ("EFT") to the NJDEP Hazardous Discharge Site Cleanup Fund in accordance with instructions provided below. To effect payment via EFT, the Township will instruct any designated title company at closing to remit payment in the required amount via EFT using the following information, or such other updated EFT information that NJDEP may subsequently provide to the Township and the Title Agent.

- iii. The Title Agent will make payment to NJDEP by Electronic Funds Transfer (EFT) using the information below:

Receiving Bank:	Wells Fargo Bank NA
	1525 West W.T. Harris Blvd.
	Charlotte, NC 28262
	(704) 444-6094
Account Name:	Hazardous Discharge Site Cleanup Fund
	(HDSCF)
ABA#:	121000248
Account#:	2100007132552
Fund:	E8-S31

**Commented [CD8]:** Add back in when document is ready to be finalized

- iv. At the time of payment via EFT, the Title Agent will send notice, by email, that such payment has been made to the following:

New Jersey Department of the Treasury  
Division of Revenue & Enterprise Services  
PO Box 417  
Trenton, NJ 08646-0417  
[HYPERLINK "mailto:elaine.silvestri@treas.nj.gov" ]

And

NJDEP  
Site Remediation & Waste Mgmt. Program  
401 East State Street  
Trenton, NJ 08628-0420  
[HYPERLINK "mailto:david.haymes@dep.nj.gov" ]  
[HYPERLINK "mailto:frank.defeo@dep.nj.gov" ]

Such notice will reference the date of the EFT, the payment amount, the name of the Site, and that the payment was made to the HDSCF.

9. This Agreement expresses the intentions of the Parties with respect to the matters addressed herein and supersedes all discussions, communications and agreements expressed or implied, written, or oral, by or among the Parties regarding the matters addressed herein. This Agreement may be amended by the mutual written consent of all the Parties. Nothing in this Agreement alters the statutory, regulatory, or other authority or responsibilities of the EPA.

10. Notification to EPA of Status. Until such time as full payment has been made to EPA and NJDEP as discussed in Paragraph 8 of this Agreement, the Township expects to advise EPA and NJDEP in writing, by contacting counsel at the email addresses provided by Paragraph 8.d.iv above every ninety (90) days following the entry of the Final Judgment until the date that full payment has been made pursuant to Paragraph 8, as to the status of the sale or transfer of the Property from the Township to a redeveloper or end user.

11. This Agreement does not create any right or benefit, substantive or procedural, enforceable by law or equity, by persons who are not party to this agreement, against the Township, the NJDEP, or EPA, their officers or employees, or any other person. This Agreement does not apply to any person outside of the Township, NJDEP and EPA.

12. NJDEP continues to conduct O&M of the OU1 groundwater treatment and containment remedy and other required remediation. EPA completed its response action at the Property in October 2018 and has demobilized from the Site. Pursuant to EPA's most recent Five Year Review conducted in 2021, institutional controls in the form of a deed notice and a CEA are intended to be placed on the Property for the remedy to be protective in the long-term.

**Commented [H9]:** As above, keep this language general rather than specific to OU1 O&M tasks.

The new owner would have to file the Deed Notice and CEA.

Should MOA state that EPA will continue 5-year reviews into the future?

IN WITNESS, this Memorandum of Agreement has been signed by the Parties.

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PROTECTION AGENCY, NEW JERSEY DEPARTMENT OF ENVIRONMENTAL  
PROTECTION, AND THE TOWNSHIP OF KEARNY REGARDING SYNCON RESINS  
SUPERFUND SITE**

**FOR THE TOWNSHIP OF KEARNY**

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By:

Title:

Dated:

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PROTECTION AGENCY, NEW JERSEY DEPARTMENT OF ENVIRONMENTAL  
PROTECTION, AND THE TOWNSHIP OF KEARNY REGARDING THE SYNCON  
RESINS SUPERFUND SITE**

**FOR THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION**

\_\_\_\_\_  
By: David E. Haymes

Title: Administrator, New Jersey Spill Compensation Fund

Director, Division of Enforcement, Technical & Financial Support

Dated:

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PROTECTION AGENCY, NEW JERSEY DEPARTMENT OF ENVIRONMENTAL  
PROTECTION, AND THE TOWNSHIP OF KEARNY REGARDING THE SYNCON  
RESINS SUPERFUND SITE**

**FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

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By: Pat Evangelista

Title: Director, Superfund and Emergency Management Division

Dated:

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